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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,006	11/30/2000	Victor L. Vines M.D.	108747.00004	3430

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Thrasher Associates, LLP
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EXAMINER

SUN, XIUQIN

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,006

Applicant(s)

VINES M.D., VICTOR L.

Examiner

Xiuqin Sun

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NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 07/14/2003 has been entered.

Election/Restrictions

2. Applicant's election without traverse of inventions I and II claims 1-15 and 19-21 (claims 7-15 was originally in group II, however, in amendment dated Nov. 13, 2002, these claims were amended to be a species of amended of claim 1) in Paper No. 5 is acknowledged.

Claims 7-15 are rejoined. Claims 16-18 stand withdrawn in view of the election without traverse of paper No. 5.

Claim Rejections - 35 USC § 103

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 7-9, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyenburg et al. (EMBASE No. 1979008445) in view of Fisher et al. (Pat. No. JP405269086A).

Meyenburg et al. teach a method of using a recording device that records a pressure in a vacuum device adapted for fetal obstetrics, the vacuum device enabled to couple to a fetus, comprising (see the complete article): placing the vacuum device on a fetus, the space between the fetus and the vacuum device having a pressure; initiating a vacuum pressure in the suction device; electronically detecting a pressure in the vacuum device, the vacuum device enabled to couple to a fetus; and automatically recording the pressure in real time. Meyenburg et al. further teach the steps of (see the complete article): coupling the recording device to the vacuum device, the vacuum device enabled to couple to a fetus; and recording the pressure in real time so that a record may be produced therefrom. Meyenburg et al. further teach the acts of (see the complete article): engaging a monitor; keeping the vacuum pressure in the suction device under a predetermined pressure level; processing the recorded pressure to determine if the vacuum pressure is greater than a predetermined pressure; and removing the suction device from the fetus.

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Meyenburg et al. do not mention that: storing a record of the pressure, said storing is achieved electronically.

Fisher et al. teach a vacuum controller that controls the pressure in a vacuum chamber. The teaching of Fisher et al. includes the step and means of storing a record of the pressure, and said storing is achieved electronically (see machine translation: abstract; and section 0018). It is also contended that the teaching of Fisher et al. is broad enough to include the limitation of storing a record of the pressure mechanically.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Fisher et al. in the system of Meyenburg et al. in order to keep tracking of the variation of the measured vacuum pressure with time for further data analysis (Fisher et al., abstract).

5. Claims 4-6 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Meyenburg et al. in view of Fisher et al., as applied to claims 1, 7 and 9 above, and further in view of Ellicott (U.S. Pat. No. 5569265).

Meyenburg et al. do not mention explicitly that: generating a warning signal when a predetermined pressure level is detected; altering the pressure; releasing the pressure; directing a change in the vacuum pressure, wherein the change is an increase in the vacuum pressure to move the vacuum pressure closer to atmospheric pressure, and wherein the change is a release of the vacuum pressure in order to achieve an atmospheric pressure; altering the

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vacuum pressure in response to a direction to change the vacuum pressure; and disengaging the vacuum pressure to achieve a local atmospheric pressure.

Ellicott discloses an obstetric bonnet for assisting childbirth, and teaches: generating a warning signal when excessive force is being applied during the operation of the device (col. 4, lines 15-20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the suggestion of Ellicott warning generation in the system of Meyenburg et al. The suggestion/motivation for doing so would have been to alert practitioner more efficiently when a limiting or excessive force is being applied (Ellicott, col. 4, lines 21-37). Therefore, it would have been obvious to combine the Ellicott reference with Meyenburg in order to obtain the invention as specified in claim 4.

Ellicott teaches the step of altering the pressure to achieve a second pressure (col. 8, lines 30-45).

At the time of the invention it would have been obvious to one having ordinary skill in the art to add the step of altering the pressure to the method of Meyenburg. The suggestion/motivation for doing so would have been to provide improved control for the operation of the vacuum device (Ellicott, col. 8, lines 30-45). Therefore, it would have been obvious to combine the Ellicott reference with Meyenburg in order to obtain the invention as specified in claim 5.

Ellicott also teaches the step of releasing the pressure (col. 3, lines 64-67; col. 4, lines 1-8 and col. 10, lines 33-37).

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At time of the invention it would have been obvious to one having ordinary skill in the art to add step of releasing the pressure to the method of Meyenburg. The suggestion/motivation for doing so would be so that the vacuum device could be safely released from the fetus's head (col. 3, lines 64-67; and col. 4, lines 1-8). Therefore, it would have been obvious to combine the Ellicott reference with Meyenburg to obtain the invention as specified in claim 6.

Ellicott further teaches the steps of: directing a change in the vacuum pressure, wherein the change is an increase in the vacuum pressure to move the vacuum pressure closer to atmospheric pressure, and wherein the change is a release of the vacuum pressure in order to achieve an atmospheric pressure (col. 8, lines 30-45 and col. 10, lines 30-38); altering the vacuum pressure in response to a direction to change the vacuum pressure, and disengaging the vacuum pressure to achieve a local atmospheric pressure (col. 8, lines 30-45 and col. 10, lines 30-38).

At the time of the invention it would have been obvious to one having ordinary skill in the art to add the steps of directing a change in the vacuum pressure and altering the vacuum pressure to the method of Meyenburg. The suggestion/motivation for doing so would have been to provide improved operation of the vacuum device (Ellicott, col. 3, lines 14-18, lines 29-32). Therefore, it would have been obvious to combine the Ellicott reference and the Kawai reference with Meyenburg in order to obtain the invention as specified in claims 10-14.

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6. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyenburg et al. in view of Fisher et al., as applied to claim 19 above, and further in view of Glenn A. Hunt, Master ASE Technician (www.mitVvac.com), [on-line], [retrieved on 1 -13-2003].

Meyenburg et al. do not mention explicitly a vacuum device that comprises a MITYVAC or a disposable MITYVAC.

Hunt discloses MITYVAC pumps that can be used to create a vacuum.

At the time of the invention it would have been obvious to one having ordinary skill in the art to add a MITYVAC pump as taught by Hunt to the system of Meyenburg. The suggestion/motivation for doing so would have been to achieve a near perfect vacuum in the vacuum chamber. Therefore, it would have been obvious to combine the Hunt's reference with Meyenburg to obtain the invention as specified in claims 21 and 22.

Prior Art Citations

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- (1) Kawai (U.S. Pat. No. 3765408) discloses a soft obstetric vacuum cup for assisting childbirth.
- (2) Dimitriu et al. (U.S. Pat. No. 6361542 B1) disclose a Obstetrical vacuum extractor cup with force measuring capabilities.

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Contact Information

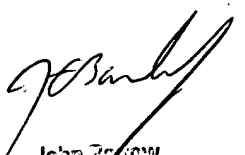
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiuqin Sun whose telephone number is (703)305-3467. The examiner can normally be reached on 7:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (703)308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

XS

January 8, 2004


John Barlow
Supervisory Patent Examiner
Technology Center 2800